

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 09-50026 (REG)
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6 In the Matter of:

7 GENERAL MOTORS CORPORATION,

8 Debtors.

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12 United States Bankruptcy Court
13 One Bowling Green
14 New York, New York
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16 September 24, 2012

17 9:49 AM
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21 B E F O R E:

22 HON. ROBERT E. GERBER

23 U.S. BANKRUPTCY JUDGE
24

25 ECRO - MATTHEW

1 HEARING re Motion of Jaspan Schlesinger LLP to withdraw as
2 counsel of record for Woodbury Cadillac, LLC
3
4 Motion for objection to claim(s) number: 50085 of Autonation,
5 Inc.
6
7 Motors Liquidation Company GUC Trust's Objection to Claim No.
8 66309 filed by Castle Buick Pontiac GMC, Inc. and Claim No.
9 66310 filed by Grossinger Autoplex, Inc.
10
11 Motors Liquidation Company GUC Trust's objection to Claim(s)
12 number 71060
13
14 Objection to Claim #29628 filed by Tiesha McNeal
15
16 Objection to Claim(s) Number 62969 filed by John A. Haack
17
18 Debtor's 187th Omnibus Objection to Claims (qualified defined
19 benefits, pension benefits claim of former salaried and hourly
20 employees)
21
22 Debtor's 186th Omnibus Objection to Claims (qualified defined
23 benefits, pension benefits claims of former salaried and hourly
24 employees)
25

1 227th Omnibus Objection to Claims (welfare benefits claims of
2 retired and former salaries and executive employees)

3
4 237th Omnibus Objection to Claims (claims relating to former
5 employees represented by United Auto Workers)

6
7 243rd Omnibus Objection to Claims and Motion requesting
8 enforcement of Bar Date Orders Overstreet Claim #s 70471, 70469
9 & 70470

10
11 262nd Omnibus Objection to Claim(s) (pension benefits claims of
12 former salaried and hourly employees)

13
14 282nd Omnibus Objection to Claim(s)

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16 283rd Omnibus Objection to Claim(s)

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18 284th Omnibus Objection to Claim(s)

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20 285th Omnibus Objection to Claims

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25 Transcribed by: Sheila Orms

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P R O C E E D I N G S

THE COURT: Good morning. Have seats, please.
Mr. Griffiths, good morning.

MR. GRIFFITHS: Good morning, Your Honor. David Griffiths of Weil, Gotshal & Manges for the Motors Liquidation Company GUC Trust.

THE COURT: Do you have a recommendation as to the order in which you'd like to deal with the matters today?

MR. GRIFFITHS: Yes, please, Your Honor. I have my colleague, Angela Zambrano of Weil, Gotshal & Manges to present item number 1 on the agenda, and then we would propose to speed through the -- a number of matters that Weil Gotshal is handling before handing over to Dickstein Shapiro for the remaining matters on the agenda.

THE COURT: Well, that sounds fine, Mr. Griffiths.

MR. GRIFFITHS: Okay.

THE COURT: Ms. Zambrano, do you want to come up, please? Mr. Brown, are you on the phone?

MS. ZAMBRANO: I believe they announced him when we were beginning.

THE COURT: Mark Brown for the Castillo plaintiffs?

MR. BROWN: Yes, Your Honor. Can --

THE COURT: Now I can hear you. Okay. Now I can hear you fine.

MR. BROWN: Good morning, Your Honor.

1 THE COURT: Good morning. Folks, I've read the papers
2 and the issues here I think are not as difficult as they were
3 in some other class action certification matters, that I dealt
4 with, most significantly the Apartheid matter, although I was
5 puzzled by the lack of mention of that decision in the papers
6 on each side.

7 I'd like both sides to be prepared to address a couple
8 of questions that I have. One, am I right in my understanding
9 that Old GM is not objecting to the \$4 million in fees that was
10 provided for under the original settlement, and which I would
11 understand to be an element of rejection damages, possibly
12 accounting for why, if I'm right, Old GM isn't objecting to
13 them.

14 But vis a vis the other entitlements under the
15 original settlement, I'd like to know if a class were to be
16 certified, whether we would then have to set up a reserve or
17 whether a reserve has already been set up to take into account
18 liabilities under the settlement, which could then have a
19 spillover effect on the other creditors in the Old GM estate,
20 who presumably would be getting supplemental distributions as
21 claims are resolved, or who conversely would have to wait on
22 getting supplemental distributions to the extent they weren't.

23 I also want both sides to deal with how I would deal
24 with the estimation process for that. I have in the past had
25 to have estimation proceedings or otherwise to deal with

1 estimation for reserves. I'd also like to know how we would
2 notice the 149,000 or whatever the exact number is of members
3 of the class, and how much it would cost. And what the
4 proposals are for who would bear the cost if we were to do
5 that.

6 I want both sides to be prepared to address the effect
7 on GM's other creditors, Old GM's other creditors of the
8 certification that's been requested here.

9 Ms. Zambrano, you came up to the main lectern
10 presumably as claims objector. Why don't you lead off and then
11 I'll give Mr. Brown a chance to be heard, you a chance to reply
12 if you want to, and Mr. Brown a chance to sur-reply if he wants
13 to in the latter two cases limited to the new stuff that's
14 discussed.

15 MS. ZAMBRANO: Thank you, Your Honor. I'm sorry if I
16 jumped the gun. I heard my name and popped up. This is
17 probably my last hearing before Your Honor. As you may be
18 aware, I have been handling the class claims against the Old
19 GM, and this is the last one on the claims register that's
20 purported to be a class claim.

21 It also presents, as Your Honor has indicated, not the
22 most difficult issues under Rule 23, but some real practical
23 concerns that we've had in trying to administer or trying to
24 resolve rather this claim.

25 On the one hand, we have a judgment that has been

1 entered. I will note that the agreement was not final under
2 its terms, but we certainly have a final judgment, and we have
3 a federal court that has applied Rule 23 and decided that it
4 should be a class settlement. On the other hand --

5 THE COURT: Pause, please, Ms. Zambrano. And I
6 should've picked it up from the papers, forgive me, you and Mr.
7 Brown both forgive me.

8 Was the class certified for settlement purposes only
9 or was it certified as a class deserving of going forward and
10 then settled?

11 MS. ZAMBRANO: It was certified as the settlement
12 class, although if you read the Supreme Court decisions of
13 late, there should be no difference. But it was certified in
14 the connection with the class settlement.

15 THE COURT: Okay. Continue.

16 MS. ZAMBRANO: And so on the one hand we do have a
17 federal court who's looked at this and has said that Rule 23
18 applies and has entered a judgment on a settlement, a
19 stipulation of settlement. On the other hand, you have a very
20 different situation than we've had in all of the class claims
21 that I'm aware of against this estate. And frankly in my
22 practice, as a class action practitioner, in this case, when we
23 had a stipulation of settlement between the plaintiffs and Old
24 GM in July of 2008, all the way back then, we had Old GM come
25 forward and say, we're going to just start paying the

1 consideration that is due under the settlement or that will be
2 due.

3 I'm sure it comes to no surprise to you that it took
4 some time for that to work through -- its way through the
5 system, and have the papers filed, the Court have a hearing,
6 objectors look at it, all of that until finally we had a final
7 hearing in April of 2009.

8 We all know that the world looked quite different
9 during -- at that point, but in that whole time period that Old
10 GM had stood up, actually it was in February had stood up and
11 said we'll start honoring it. We had thousands of people come
12 forward and millions of dollars were paid pursuant to that
13 settlement before ultimately the company filed for bankruptcy.

14 And so that is very different than anyone that -- any
15 other class action that we have where creditors or excuse me,
16 where class action plaintiffs before final judgment were able
17 to recover.

18 And then, of course, we had the filing. And there was
19 a period of time after the filing in which New GM, I think Your
20 Honor noted in the adversary proceeding ruling, probably out of
21 confusion, who knows, but New GM continued to pay the
22 settlement that was due under the class action settlement
23 agreement. And so you had millions more paid under -- by New
24 GM under the terms of the settlement.

25 And then, of course, New GM decided that it would

1 change its policy, but it would still reimburse these class
2 members. Those class members then have been in the very
3 enviable position, from my view, who as part of representing GM
4 I also mediate cases in which unsecured claimants with -- that
5 are very horribly injured and have claims and mediate their
6 claims against the estate, they have not been in the position
7 of being able to recover anything before they work theirsevels
8 through this process.

9 These class members were not in that situation. They
10 were able to recover first whatever they would've been entitled
11 to under the class action settlement, and then even whole
12 dollars from New GM to obtain reimbursement.

13 And so we think when we're trying to resolve this for
14 the best interests of the estate, and that the creditors, we
15 look at that situation versus what the Court initially started
16 with, the federal court in California. And we don't think that
17 this is a situation where you could just allow this class claim
18 for the amount that's been filed because there's a judgment.

19 We don't know within that class, that former class, in
20 my opinion, whether -- who should obtain consideration from the
21 estate and how much. And so there has to be some sort of
22 process if the Court would permit that to continue at all.

23 It is our opinion, the Trust's view, that enough is
24 enough. They've had sufficient notice of their rights under --
25 against Old GM and then New GM, and they had the opportunity to

1 obtain not an unsecured class claim and whatever that's worth
2 presently, but whole dollars from Old GM and then New GM. And
3 so at this juncture to require either the plaintiffs or the
4 estate to renote that class, we think does not make sense.

5 Now, I want to address the specific questions that
6 Your Honor raised, and I can -- some of them are easy to deal
7 with.

8 The first question that you asked was whether Old GM
9 is not objecting to the \$4 million in fees. The answer to that
10 question is yes, that is correct, we are not objecting. And
11 the reason why we are not objecting is if you look at the value
12 that this class actually obtained -- excuse me, this class
13 counsel actually obtained for the class, it's substantial.
14 They -- their work and that process started a process by which
15 \$35 million was obtained and value was obtained for the class
16 members.

17 And so we think that that's an amount that we know,
18 they've proved it to the federal court in California, and we
19 don't have an objection to that now.

20 The next question that you asked if class was
21 certified, would we have to set up a reserve. I'm going to
22 have to check with my client to be a hundred percent sure on
23 this. But it's my understanding that a reserve has been set up
24 in the amount of the claim. But I can confirm that for Your
25 Honor. And so, in other words, would there be -- you know,

1 would there be a possibility -- was there a small reserve set
2 up such that we would have to go back and upset the apple cart
3 with respect to other claimants. I don't think so. I think
4 the reserve was set at the amount of the claim.

5 THE COURT: Pause, please. If that is still then,
6 that means we don't have to create a new reserve, but the
7 existence of the reserve is in substance holding back money
8 that could otherwise go to other creditors.

9 MS. ZAMBRANO: That's right. And the other prejudice
10 that the other creditors are dealing with, of course, is the
11 timing of this to the extent that additional notice would be,
12 you know, provided to the class.

13 I thought that in focusing on these issues this
14 morning, it occurred to me, this isn't just an issue of notice.
15 Because it's not like if we just noticed the people and they
16 come forward that then we can say, ah-ha, that's the amount of
17 the claim. We -- every class member was supposed to get \$50
18 and you have -- now we have 200 more people that are coming
19 forward, that's the amount and we go forward.

20 This was a very complicated settlement in which people
21 had to submit specific forms of reimbursement, and they were
22 entitled to certain amounts, you know, if they substantiated
23 what that consideration level under the settlement agreement
24 was. It's not just a multiplied by the number of claimants
25 that show up. And so there's actually notice and

1 administration costs here.

2 And in our view, certainly the estate shouldn't pay
3 for that, given the notice that has already been given to the
4 class and paid for by Old GM initially with specifically, with
5 respect to this claim, and then with New GM, of course, as
6 well.

7 You said how we would notice this class. I don't know
8 the answer to that, Your Honor. I know that we would start, of
9 course, by going to New GM and getting the records of the
10 Saturn owners during this time period that had already been
11 sent two letters, that would be the first place to start. I
12 suppose you could do some sort of publication notice. I don't
13 know. I do know that whatever notice, if it was specific to
14 the claimant, would be the third type of notice that we
15 would've provided to them. And I don't have an estimate of the
16 costs. Again I will say I don't think it's the estate that
17 should bear that at this point.

18 We've cited a couple of cases in our papers, Your
19 Honor, for the proposition that the plaintiffs that are
20 bringing this case should bear that cost.

21 THE COURT: Now, at one time notice was sent to
22 presumably the 149,000 class members back in prepetition
23 plenary litigation. Am I right that if you were willing to pay
24 the cost for 149,000 class members, you could simply send them
25 mailings using the old address list that we used back then?

1 MS. ZAMBRANO: That would be the only way I would know
2 how to proceed. That's definitely what we would do. Although,
3 of course, we would research it further. That's where we would
4 start with getting the addresses from New GM, we don't have
5 them. But then, and that's what I was trying to highlight,
6 it's not just sending the notice and then waiting for things to
7 come in, and multiplying by that number of claimants. It's the
8 administration of the cost. Which in my view in class action
9 litigation can be substantial. Someone has to deal with each
10 of those things that come back, figure out how they -- where
11 they fall in the settlement, how many miles did they have at
12 the time, were they the original owner, whether they should be
13 -- what portion should they be entitled to of the menu of
14 consideration that's provided under that agreement.

15 THE COURT: So are you saying it's more than simply
16 multiplying the cost of a mailing of postage by 149,000?

17 MS. ZAMBRANO: Exactly, exactly.

18 THE COURT: Go on, please.

19 MS. ZAMBRANO: And then I think I want to end with
20 your last question because it ties into all of this, you know,
21 how would you deal with an estimation process here.

22 I don't think we can begin to estimate until we figure
23 out who we're really dealing with. And so the notice cost, the
24 administration cost and go from there. I think then we can do
25 an estimation.

1 You could remember the DEX-COOL claimants that we had
2 before you, in those situations, and in one other I believe,
3 the Solders Class (ph), I know Your Honor has had a lot with
4 them -- this case.

5 THE COURT: Frankly, the only one I really remember
6 well at this point is Apartheid.

7 MS. ZAMBRANO: Well, I'll tell you in those cases, we
8 were able to achieve some sort of resolution with the class
9 claimants because where the bankruptcy fell in the life of that
10 class action was the notice had come out -- had gone out, the
11 class action papers or the claim forms had gone out, and the
12 claim forms, some of them had come back. And so they were
13 sitting in a box somewhere. And we could either estimate for
14 Solders, because there is again, there's administration,
15 substantial administration costs in going through those, but we
16 could do that.

17 With GM, we could extrapolate how much someone would
18 be entitled to under the settlement. We don't have that here.
19 We -- I can think of no reasonably practical way to estimate
20 this claim at this juncture, and I don't think plaintiff's
21 counsel can either.

22 And so the situation that we're in is we have to go
23 through this notice and full administration of a class claim to
24 get to, what I believe at the end of the day, are no claimants.
25 I think anyone who's had a claim for a transmission problem

1 with this year of Saturn during this entire time period
2 would've gone and gotten whole dollars from either Old GM in
3 the beginning, the moment it was announced, or certainly as Old
4 GM was having financial problems, you'd bring your car in. And
5 after that time period, of course, New GM stood ready and
6 stands ready today to reimburse people for those same problems.

7 And so I don't think at the end of the day after all
8 of this work you're actually going to find claimants. And so
9 that's why we ultimately decided that the most appropriate way
10 to resolve this for the estate, and all the other creditors
11 that we're dealing with and must think about as well, is to
12 expunge the class claimant at this juncture.

13 We are, of course, allowing any individual claim that
14 was filed on these problem -- because of these problems.
15 That's, of course, appropriate. It's the class nature, the
16 representative nature, I just don't think has a place in this
17 bankruptcy at this point.

18 THE COURT: Pause please, Ms. Zambrano. Something you
19 said in your most recent remarks got my attention. Did I
20 understand you to say that even to this date, New GM is
21 bellying up to the bar on making repairs for class members?

22 MS. ZAMBRANO: Yes, Your Honor. What they have agreed
23 to do, they agreed some time ago and have been honoring it, is
24 to reimburse class members up to 80,000 -- excuse me, 100,000
25 miles or eight years from the date of purchase for this

1 particular problem at 50 percent. So it's not the whole
2 dollars or a hundred percent reimbursement that was under the
3 settlement. And it's not the hundred percent that the New GM
4 was paying immediately post bankruptcy, but they are doing
5 that. They also have a program with respect to the trade in
6 value, and I don't know the details of that.

7 THE COURT: In essence, it's like a voucher that you
8 can apply towards the purchase of a new vehicle in some amount?

9 MS. ZAMBRANO: I think that's right. But it's --
10 there's two components of the consideration. But the 50
11 percent of just cash that you're out is the one that I don't
12 think someone, you know, that went through this entire process
13 would say, oh, I'm going to wait, and I'm going to have my
14 class claim be administered in the bankruptcy, and I'm going to
15 get pennies on the dollar, and that's the way I want to be
16 reimbursed. I just don't think that makes sense.

17 THE COURT: Did I properly understand you to say that
18 up to an earlier time, rather than getting paid at the 50
19 percent rate, the totality of the repair costs were absorbed by
20 either Old GM or New GM?

21 MS. ZAMBRANO: Yeah, the settlement that Old GM
22 entered into was for -- again, you have to fit into our certain
23 bucket, but for a certain bucket, purchased a new car within a
24 certain number of years, I think it's 80 maybe 100,000 miles,
25 if you came in, and you had your repair costs, you'd get them a

1 hundred percent covered. Okay. And that was -- and Mr. Brown
2 can -- knows the details far more than -- better than I do.
3 But that was the deal under the old settlement, and New GM --
4 and Old GM honored that for five, six months, paid \$14 million
5 in that type of reimbursement.

6 New GM also did for a period of time after the filing,
7 and paid about 5 -- between 5 and \$6 million. And the
8 consideration again that New GM is paying, is different, but
9 it's whole dollars reimbursement, and they stand ready to do so
10 today if the vehicle, you know, fits into that category.

11 THE COURT: Okay. Anything else?

12 MS. ZAMBRANO: Not at this time, Your Honor, thank
13 you.

14 THE COURT: Okay. Mr. Brown?

15 MR. BROWN: Yes, Your Honor. I think the parties are
16 in agreement that the Court has discretion here with this
17 situation. The challenge I think in exercising that discretion
18 is, and Ms. Zambrano has touched on it, the substantial relief
19 that a significant number of class members have already
20 received. I'm not aware, and spent a good amount of time
21 looking for perhaps something that might guide the Court in
22 these circumstances. And I'm simply aware of none.

23 I think this may be an unprecedented set of
24 circumstances for the Court to consider. Having said that, of
25 course, we certainly request that the Court exercise its

1 discretion in favor of the class members and permit the proof
2 of claim, and deny the motion.

3 To answer the Court's specific questions, let me start
4 with the estimation question first because I might be able to
5 shed the most light on that, that particular question.

6 In the underlying district court proceeding in
7 California, as part of the final approval process, we secured
8 the services of an independent actuary to estimate the total
9 value of the relief to the class under settlement, the terms of
10 the settlement. Of course, at that time, it was anticipated
11 that the settlement would be fully honored, and we weren't
12 anticipating bankruptcy.

13 And what the actuary did was he reviewed the claims
14 data that GM provided in terms of the warranty data for
15 vehicles that were visited by GM repair shops at the time, and
16 then extrapolated for what the likely failure rate would be
17 going forward. And recognizing that the settlement essentially
18 called for an extended warranty taking the vehicles to 125,000
19 miles, Mr. Johnson, the actuary, estimated that the total value
20 of relief to the class was 50 -- approximately \$57 million.

21 Of that 57 million, I believe he determined that
22 approximately 47 million represented what he expected to be the
23 costs of payment to class members for repairs and relief under
24 the settlement agreement. The remaining approximately 10
25 million represented administration costs and overhead,

1 personnel training, and significantly profit to the -- an
2 insurer, because he estimated this as if it were to be -- as a
3 liability if it were to be purchased by an insurance company or
4 an extended warranty company that they would then go ahead and
5 administer the settlement.

6 So considering that, his estimate that was that the
7 pay-out to actual class members would be approximately 47
8 million. We now know from records provided by GM that
9 approximately 36 million has been paid as a result of the class
10 judgment, either by honoring the specific terms a hundred
11 percent, or in the form of the alternative relief that New GM
12 has since imposed.

13 And so I suppose one way to look at this would be that
14 if you subtract 36 million from 47, that's \$11 million, and
15 it's also the case that because of the GM -- what I'll call the
16 buy back program, where it was \$5,000 I understand for a trade
17 in on one of these class vehicles. As a result of that, a
18 number of vehicles were removed from the roads, and so that
19 might also affect the estimates of how many repairs there will
20 be going forward. Obviously, if the cars are not on the road,
21 they're not being driven and they can't fail. So there would
22 be that intact as well.

23 So I do think there is a reasonable basis for
24 estimating. We haven't formalized that information to make it
25 available to the Court. I'm happy to do that. But that's

1 certainly something for the Court to take into account. And I
2 hope I've answered the Court's questions in that regard.

3 I think Ms. Zambrano answered the question about the
4 reserve and therefore, the impact on other creditors. In terms
5 of notice to the class, and how that would be accomplished and
6 would be paid for, it is the case that in a typical class
7 action outside the bankruptcy context, prior to trial or
8 judgment, it's typically the responsibility of their class
9 counsel to pay for notice to the class. However, in the case
10 of a settlement, it's typically the defendant who pays for the
11 notice and that was certainly the case her. Old GM paid for
12 notice to the class, and not only did Old GM pay for the
13 original notice to the class, but Old GM also agreed it was by
14 Old GM's request actually that they wanted a two-step process,
15 whereby claim forms would be sent in addition to the initial
16 notice.

And so that was an undertaking that Old GM agreed to.

17 In this context, if the Court were to undertake an
18 estimation process, it seems that a compromised position might
19 be that out of the -- I suppose, as class members submitted
20 claim forms, that really is the only way I know of to identify
21 the exact amount that may still be owed to class members who
22 haven't yet received any recovery. And I suppose it would be
23 possible to provide for those notice costs out of that pool.

24 THE COURT: Pause, please, Mr. Brown. To what extent
25 did class members send back claim forms with respect to

1 individual amounts that they would want for their pieces of the
2 pie under the overall settlement?

3 MR. BROWN: Well, unfortunately that was the problem,
4 Your Honor. The judgment was final, and unappealable prior to
5 the petition, the bankruptcy petition being filed.

6 Unfortunately, the deadline under the agreement and under the
7 judgment for Old GM to send claim forms was June 2nd. And as
8 the Court knows, the bankruptcy petition was filed on June 1st.

9 So there weren't actual claim forms sent to the class
10 members as contemplated by the judgment because the bankruptcy
11 petition intervened.

12 THE COURT: Uh-huh. Continue, please.

13 MR. BROWN: I think the last question for me to answer
14 was actually the Court's first question and Ms. Zambrano
15 touched on it. You asked whether Old GM was objecting to the
16 proof of claim form of class counsel's fees, and I understand
17 that the trust is not objecting.

18 I'd simply like to add to that, Your Honor, in
19 addition, of course, to the very substantial relief that the
20 classes received as a result of our efforts, and we're very
21 proud of that, the difference between the proof of claim filed
22 on behalf of class counsel and filed on behalf of the entire
23 class, although we're both judgment creditors, we in the class,
24 the difference is as class counsel we have a liquidated claim,
25 and obviously were identifiable, they are not the

1 administrative issues that unfortunately involved the class.

2 But we have engaged in this litigation since 2007, and
3 without any -- not only without any promise of recovery, but in
4 addition to the significant time that we've expended, there's
5 been significant expense both in terms of prosecuting the
6 underlying case, prosecuting the adversary proceeding which by
7 the way, class counsel continues to pursue by way of appeal to
8 Judge Jones. And there have been out of pocket costs in terms
9 of hiring personnel to handle the influx of calls, and to
10 engage local counsel to assist with the adversary proceeding
11 and the bankruptcy proceeding in New York. And so there's been
12 a significant outlay. And we're -- although we would have
13 preferred to prevail already in the adversary proceeding, we're
14 very proud of the efforts that have taken place so far and the
15 results for the class.

16 And I believe that answers the Court's questions.

17 THE COURT: Okay. Anything further, Mr. Brown?

18 MR. BROWN: Not that I can think of, Your Honor.

19 THE COURT: Okay. Ms. Zambrano, any reply?

20 MS. ZAMBRANO: Two things. First of all, I just want
21 to note with respect to the \$57 million number that was thrown
22 out there, that was not a number that was at all agreed to by
23 Old GM, sanctioned by the Court, whatever. That was the
24 plaintiff's number, and so you know, we can't agree to that.
25 But let's just set that aside and decide or suppose that you

1 could come up with some number from that expert number that the
2 plaintiff had versus what we've -- we know from New GM and Old
3 GM's records show that's been paid to this class.

4 That still gets us to the same spot that we're at.
5 Even if you put a number on it, and it's a lesser number, and
6 that is how do you administer that to people who actually
7 haven't been compensated at all in this process. And that, of
8 course, is very important to the trust because of the other
9 claimants that we must also recognize their rights.

10 So I think the real problem here is we cannot identify
11 without substantial administrative burden anyone who hasn't
12 received not one, but two times notice of their rights. And
13 given that New GM stands ready to compensate people for this
14 problem, albeit a limited number, not all of them, they have to
15 meet New GM's requirements as well, we think it is
16 inappropriate for the trust to be bearing this as a cost claim.

17 Thank you, Your Honor.

18 THE COURT: Thank you. Everybody sit in place for a
19 minute.

20 (Pause)

21 THE COURT: Ladies and gentlemen, in the exercise of
22 my discretion, I'm declining to make adversary rule Bankruptcy
23 Rule 7023 and Civil Rule 23 applicable to this contested matter
24 vis a vis the allowance of the claims of the transmission class
25 members on a class basis for the avoidance of doubt, having no

1 ruling vis a vis those asserting similar claims on an
2 individual basis. And the following are the bases for the
3 exercise of my discretion in connection with this
4 determination.

5 Both sides agree that it's within my discretion to
6 make this determination. And in the respects relevant here,
7 there is no material disputed issue of fact. I worked with the
8 facts that were stipulated to by the Castillo plaintiffs.

9 The law informing the exercise of my discretion
10 likewise is not disputed. Much of it appears in my earlier
11 decision in this very bankruptcy case In Re Motors Liquidation
12 Company, what I sometimes refer to as the Apartheid decision,
13 447 B.R. 150, starting at page 155.

14 As I there discussed, while I normally start with
15 textual analysis in any dispute where such is relevant, textual
16 analysis is of only limited utility when bankruptcy judges like
17 me are asked to determine whether they should apply Bankruptcy
18 Rule 7023 and Civil Rule 23 to contested matters.

19 The Bankruptcy Code is silent on the extent to which a
20 claim may be filed on behalf of persons other than the
21 claimant, or the standards under which a Court might find that
22 to be appropriate. And the bankruptcy rules in the respects
23 relevant here are as well.

24 Class certification in cases under the Bankruptcy Code
25 is expressly addressed in Federal Rule of Bankruptcy Procure

1 7023, which provides that Rule 23 FRCP applies in adversary
2 proceedings. But claims allowance matters, when objected to,
3 are contested matters, not adversary proceedings, and instead
4 are governed by Bankruptcy Rule 9014, which is silent as to
5 class action treatment or incorporation of Rule -- Civil Rule
6 23.

7 And in respect of what I just said, I was effectively
8 reading from my earlier decision in the GM Apartheid decision,
9 447 B.R. at pages 155 to 156. As I then went on to say in that
10 same decision, an analysis that is equally applicable here,
11 Bankruptcy Rule 9014(c), captioned application of Part 7 rules
12 provides, that except as otherwise provided in this rule, and
13 unless the Court directs otherwise, the following rules shall
14 apply. Rule 9014(c) continues with a fairly long listing of
15 Part 7 rules that unless the Court directs otherwise, apply to
16 contested matters. But Rule 7023 is not one of them.

17 Thus, Rule 7023 doesn't apply in contested matters,
18 quote, unless the Courts directs otherwise, end quote. But
19 while at least implying that a bankruptcy court has the power
20 to direct otherwise, and thus to apply Rule 7023, and hence,
21 Civil Rule 23 in claims allowance matters, Rule 9014 is silent
22 as to standards under which courts should do so.

23 Thus, as in so many areas where the Code and rules are
24 silent, bankruptcy courts look to case law to fill the gaps.

25 In this district, it's been held that while class

1 proofs of claim in bankruptcy are not prohibited, the right to
2 file one is not absolute. The decision to extend civil rules
3 application, Rule 23's application is committed to the Court's
4 discretion. The exercise of that discretion is informed by
5 special considerations applicable in bankruptcy cases that are
6 super imposed on those that apply in any determination under
7 Civil Rule 23.

8 Although the Bankruptcy Code and rules give no express
9 guidance for the Court's exercise of this discretion, a
10 pervasive theme is avoiding undue delay in the administration
11 of the case. And Judge Gropper of this court has observed,
12 that the affect of a class claim on other creditors is an
13 important factor in a Court's decision as to whether to
14 exercise its discretion and grant Rule 23 certification.

15 Here I determined that bankruptcy concerns make it
16 inappropriate for me to make Civil Rule 23 applicable to this
17 claim. In addition, I determine that by reason of changed
18 circumstances, it would also be inappropriate to certify the
19 class with or without consideration of those Rule 23 concerns.

20 Here, much of the information that has -- that is
21 relevant to the class certification determination was
22 recognized. I don't want to say conceded. I want to say
23 recognized by the Castillo plaintiffs.

24 Their responding brief here displayed candor that
25 frankly I don't always see in the submissions by lawyers in

1 cases on my watch. For that candor, I am grateful. But let me
2 talk for a minute about some of the undisputed facts which with
3 that candor they recognized, and I'm looking to pages 2 to 3 of
4 their responsive brief.

5 Thousands of class members have already received
6 reimbursement as a result of the class judgment in an amount
7 exceeding \$36 million. They did so because the class judgment
8 extended the transmission warranty, essentially providing
9 specific performance as a remedy. Old GM provided complete
10 relief to class members through July 9, 2009. New GM provided
11 complete relief to class members through September 29, 2009,
12 and New GM provided alternate relief thereafter and continues
13 to do so.

14 As I've stated in other contexts, specific performance
15 is unavailable as a remedy to any debtor that concludes that
16 it's inappropriate or inconsistent with the needs and concerns
17 of other creditors. But where, of course, it has been
18 provided, the debtor has in substance given full relief to
19 those who got that benefit, in effect, 100 percent dollars as
20 contrasted to what we in the bankruptcy community refer to as
21 little bitty bankruptcy dollars, which in the case of insolvent
22 debtors, which is what we have here, are worth a lot less than
23 full performance.

24 As the Castillo plaintiffs again with candor
25 recognized, and I'm reading from the bottom of page 2 of their

1 response, there is no evidence or reason to believe that any
2 class member who was otherwise entitled to relief under the
3 class judgment, and at any time between February of 2009 and
4 January 1, 2012 requested reimbursement from Old GM or New GM
5 was not offered at least some relief, in accordance with one of
6 the policies described in detail below.

7 The Castillo plaintiffs did not dispute that the GUC
8 Trust would be entitled to a set off with respect to such class
9 members. They continued, and I'm quoting, "However identifying
10 the specific class members as to whom the set off would apply
11 and the specific set off amount for each one, would require an
12 administrative process whose cost in relation to the value of
13 remaining relief, if in fact, they are entitled class members
14 who did not already receive reimbursement is unknown. This
15 information could not be known without incurring the cost of
16 providing additional notice and claim forms to all members of
17 the certified class." And here we have a class of 149,000
18 members.

19 Likewise at page 7 paragraph 19, the Castillo
20 plaintiffs recognized that without providing claim forms to
21 each of the approximately 149,000 class members, they knew of
22 no way to determine which, if any, of the class members who had
23 not already received their share of the more \$36 million
24 already reimbursed by Old GM or New GM might be entitled to
25 additional relief under the class judgment. Nor could they

1 specify the dollar value of any such remaining relief.

2 And then once again, they recognize that the class
3 judgment essentially required specific performance of an
4 extended warranty, and there was no way to know how many class
5 members experienced unreimbursed transmission failures during
6 the pendency of the bankruptcy.

7 The Castillo class properly recognized that where a
8 class is certified prepetition, that is significant to a
9 Court's determination. And if it were the case, and this is
10 classic dictum I guess, where a class had been certified
11 prepetition and afterwards, there was no change in the facts
12 between the prepetition class certification and the time the
13 bankruptcy judge was asked to rule on class certification, such
14 a fact would heavily weigh on continuing class certification
15 during the post petition period.

16 But the facts have changed, and that is still only one
17 of the factors that we bankruptcy judges consider in deciding
18 whether to grant class certification. We still have to analyze
19 the interplay between class certification and the needs and
20 concerns of administering the Chapter 11 case, and in
21 particular, the needs and concerns of other creditors.

22 Here, it is recognized by both sides that many, if not
23 most, if not all of the class members have now received the
24 benefits for which the class action was brought. Indeed,
25 that's one reason why Old GM did not object to the payment of

1 fees, and why I am not of a mind to question the payment of
2 fees even on my own initiative. There is no doubt that by
3 reason of the \$36 million in benefits, the class was
4 benefitted. Everything now known to me suggests that the class
5 counsel did their jobs and got the benefit of a class action
6 for which we looked to class actions to achieve.

7 But the issue is today not whether class action
8 counsel should get the \$4 million in fees, as an allowed claim,
9 that matter is to my mind, behind us. It is rather the extent
10 to which I should certify a class for the unknown number of
11 class plaintiffs who after those four separate mechanisms still
12 might have something due and owing.

13 Here, it is undisputed that the costs of that are
14 substantial. There is uncertain benefit to be obtained, if
15 any. And then other bankruptcy concerns also dictate denying
16 further class action certification here.

17 Whenever an unliquidated sum is sought to be recovered
18 as part of a class action, at least in a liquidating plan, we
19 have a need to set up a reserve to do so. It appears to be
20 undisputed that a reserve was established, but because that
21 reserve was established by definition, that makes funds or
22 consideration, here the funds are not strictly cash money, it
23 involves allocated stock, but the principle is the same, that
24 are unavailable for distribution to other creditors.

25 We can, if we choose to, engage in a claims estimation

1 process for that purpose, but claims estimation processes are
2 expensive, and by definition, less precise than actual claims
3 allowance matters.

4 In addition, while I do not quarrel with the use at
5 the time of actuarial assumptions, all of those actuarial
6 assumptions have in effect become obsolete by reason of the
7 passage of time and the further remedial action, and Old GM
8 hasn't had a chance to be heard on whether even those actuarial
9 assumptions were correct at the time.

10 Dealing with all of this would be expensive, and
11 result in delay, which is particularly a matter of concern by
12 reason of the late time by which class certification has been
13 sought. I do not need to decide and do not today decide
14 whether the passage of three years since the time of the filing
15 of the case is by itself enough to warrant denial of class
16 certification here.

17 But the passage of time is nevertheless of relevance
18 and it's of particular relevance because facts have changed
19 since the time class certification might have been sought, and
20 the time that I am now asked to rule upon this.

21 Likewise, the ameliorative activities taken since the
22 original class action motion was brought in plainery
23 litigation, undercut my ability to make some of the findings
24 that I would be required to make under Rules 23(a) and 23(b) of
25 the civil rules. I don't need to address that because the

1 impropriety, or at least inappropriateness of certifying a
2 class now and making Rule 23 applicable to this contested
3 matter is so obvious, but I do note that such concerns would
4 likely make it impossible for me to find the required
5 numerosity or the finding that class action is preferable to
6 non-bankruptcy consideration of individual claims. All, of
7 course, aside from its impropriety in bankruptcy cases.

8 For all of these reasons in the exercise of my
9 discretion, I am not going to use my discretion to make Rule
10 23, Civil Rule 23 applicable to this contested matter. But for
11 the avoidance of doubt, the individual claims of people who
12 have filed still feel that they haven't gotten full relief
13 remain.

14 Likewise, the claim of class counsel for its fee under
15 the original settlement remains.

16 Ms. Zambrano, it appears from the thoughtful and
17 constructive response that was given by your opponent, there is
18 a very high likelihood that you can work out a consensual order
19 consistent with the foregoing. I want you to try. If you
20 can't do that, you're authorized to settle an order on no less
21 than one week's notice by fax or e-mail.

22 Your order can and should provide that for the
23 avoidance of doubt, that this ruling does not impair the rights
24 of class counsel to recover the fee to which they were entitled
25 under original settlement, and should also provide again for
26 the avoidance of doubt, although I think it's obvious, that

1 this is without prejudice to the rights, if any, of the
2 Castillo plaintiffs in their efforts on their appeal against
3 New GM.

4 I'm only deciding the class claims allowance that is
5 now before me. Not by way of reargument, are there any
6 questions?

7 MS. ZAMBRANO: No, Your Honor.

8 THE COURT: Mr. Brown?

9 MR. BROWN: No, thank you, Your Honor.

10 THE COURT: Okay. Mr. Brown, if you choose to, you
11 can drop off the phone.

12 MR. BROWN: Thank you very much, Your Honor.

13 THE COURT: Thank you. Have a good day.

14 MR. BROWN: Thank you.

15 THE COURT: Okay. Mr. Griffiths?

16 MR. GRIFFITHS: Thank you. With the Court's
17 permission, Ms. Zambrano can be excused for the remainder of
18 the hearing?

19 THE COURT: Oh, yes. Ms. Zambrano, you're likewise
20 excused if you choose to be.

21 MR. GRIFFITHS: Thank you, Your Honor, David Griffiths
22 of Weil, Gotshal & Manges for the Motors Liquidation Company
23 GUC Trust.

24 Your Honor, the only other substantive matter for this
25 hearing is item number 2 on the agenda that my colleague,

1 Stephanie Greer from Dickstein Shapiro will deal with shortly.

2 Items number 3 through 7 relate to omnibus objection
3 to claims of former employees of the debtors who did not submit
4 responses to the omnibus objections to their claims. However,
5 at some point during the case, contacted the debtors and
6 requested an adjournment.

7 Following that, we've contacted these claimants by
8 letter to request formal responses. No responses were
9 received. This has been done at least twice, and therefore
10 we'd now like to proceed to enter orders expunging their
11 claims. I have one claim that I've spoken to, which will be
12 Ms. Coscarelli for which I'd like to make a statement for the
13 record.

14 Mr. Brennan (ph) has agreed to withdraw his claim, and
15 Ms. Roman we've worked with separately to address certain
16 concerns she had with her insurance company.

17 THE COURT: Very well.

18 MR. GRIFFITHS: Your Honor, for the purposes of the
19 record, Ms. Coscarelli filed or has requested the following
20 statement be read into the record.

21 Ms. Coscarelli is the beneficiary of a pension that is
22 now paid for by New GM and the omnibus objection to her proof
23 of claim which was protective in nature in no way affects the
24 pension that's currently being paid by New GM. And in that
25 respect, her pension is secure subject to obviously New GM's

1 ongoing financial viability.

2 THE COURT: Very well. Then the supplemental relief
3 you requested is granted Mr. Griffiths. And once again, I want
4 to note my appreciation for the courteous way by which you've
5 dealt with these individual claimants. Thank you.

6 MR. GRIFFITHS: It's our pleasure, Your Honor.

7 And one uncontested matter, which is the 285th omnibus
8 objection to claims, which relates to pension benefits, pension
9 benefit claims of former salaries and hourly employees. This
10 relates to seven claims, it's uncontested, and request the
11 Court's permission to enter an order.

12 THE COURT: Yes, sir, granted.

13 MR. GRIFFITHS: Thank you, Your Honor. And then, Your
14 Honor, that concludes the matters that are contested for -- at
15 least for Weil. There's one uncontested matter, and it's my
16 pleasure to present Edward Wu, who's an associate of Weil,
17 Gotshal & Manges to present item number 1, which is the GUC
18 Trust objection to Claim No. 66309.

19 THE COURT: Mr. Wu, I've seen you very often, but
20 maybe behind the scenes. Welcome aboard. Come on up, please.

21 MR. WU: Thank you, Your Honor. Yes, this is my very
22 first appearance, so hopefully I'll remember it for good
23 reasons.

24 Good morning, Your Honor, Edward Wu, Weil, Gotshal &
25 Manges for the Motors Liquidation Company GUC Trust. Item 1 of

1 the uncontested matters section of the agenda concerns an
2 objection that the GUC Trust filed as to two automobile
3 dealerships, Castle Buick and Grossinger Autoplex.

4 The parties have reached a consensual resolution as to
5 this matter, and we will be presenting a proposed stipulation
6 and agreed order for your consideration, which addresses these
7 two claims, as well as two closely related claims by two other
8 automobile dealerships.

9 Each of the four claims are predicated on a
10 prepetition action in the Illinois state courts, where the
11 claimants were awarded attorney fees against the debtors. The
12 debtors then proceeded to appeal the award of attorney fees,
13 and post an appeal bond. In the process, however, the
14 automatic stay from these cases prevented the appeal from
15 continuing.

16 The stipulation agreed order that is now being
17 presented for your Court's consideration would result in the
18 withdrawal of the Castle Buick and Grossinger Autoplex claims
19 in these Chapter 11 cases, whether permitting the appeal in the
20 Illinois state courts to resume.

21 To the extent that the claimants prevail in the
22 Illinois state courts, it would then be able to recover from
23 the appeal bond. The stipulation and agreed order also
24 provides that the matters raised in the objection may also be
25 raised in the appeal.

1 Unless Your Honor has any further questions, we would
2 ask that you approve the stipulation.

3 THE COURT: No, you covered it very succinctly, Mr.
4 Wu, and that's perfectly satisfactory to me, and your motion is
5 granted.

6 MR. WU: Thank you very much.

7 THE COURT: Thank you. Have a good day. Ms. Greer.

8 MR. GRIFFITHS: Your Honor, with your permission, we
9 just have one further matter.

10 THE COURT: Forgive me. Go ahead, Mr. Griffiths.

11 MR. GRIFFITHS: No problem at all. It's the -- it's
12 item number 2 on the agenda, the motion of Jaspan and
13 Schlesinger to withdraw as counsel of record for Woodbury
14 Cadillac LLC. I have Ms. Shannon Scott to appear on behalf of
15 Jaspan Schlesinger.

16 MS. GREER: Good morning, Your Honor, Stephanie Greer
17 from Dickstein & Shapiro on behalf of the GUC Trust. Your
18 Honor, we've been back and forth with Woodbury on a number of
19 issues. I'd like to extend the courtesy to their counsel to
20 give us about a half an hour and see if they can go and resolve
21 with my colleague the terms of an agreement.

22 I hate to put this off to another day, Your Honor. I
23 know you have a very busy schedule because we've -- it's just
24 been hard fought to get to this point, and I just don't want to
25 have these guys withdraw as counsel if Your Honor is inclined

1 to grant the motion of course, and then put us in a position
2 where we need to start all over. On the other hand, I know
3 that they're anxious for a resolution one way or the other. So
4 if we could just have a little time, if we work it out, great,
5 if not, Ms. Scott could go forward with her motion.

6 THE COURT: Am I right that there's no objection to
7 the half hour adjournment?

8 MS. SCOTT: There's no objection, Your Honor.

9 THE COURT: Okay. Let me invite you all to do your
10 thing, and ask simply that somebody stick her head in my
11 chambers when you've either come to agree or agree to disagree.

12 MS. GREER: And, Your Honor, I could go forward with
13 our other matters.

14 THE COURT: Sure.

15 MS. GREER: I just need one second to coordinate with
16 Ms. Scott.

17 (Pause)

18 MS. GREER: Your Honor, I would like my colleague,
19 Colleen Kilfoyle before she walks out the door to have an
20 opportunity to present our uncontested omnibus objections to
21 Your Honor before I get to the rest of it. I'd hate for her to
22 miss out.

23 THE COURT: Sure, come on up, please.

24 MS. KILFOYLE: Good morning, Your Honor, Colleen
25 Kilfoyle with Dickstein Shapiro on behalf of the GUC Trust.

1 Today we have three uncontested omnibus objections.
2 The first is the 282nd omnibus objection based on insufficient
3 documentation, one claim adjourned and 11 going forward. And
4 the 283rd omnibus objection to claims, because the liability
5 associated with the claims, if any, is that of New GM, five
6 going forward. And the 284th omnibus objection based on
7 incorrectly classified claims, one adjourned, 16 going forward.

8 THE COURT: That's all fine, Ms. Kilfoyle.

9 MS. KILFOYLE: Your Honor, I have the orders with me,
10 shall I hand them up or submit them to chambers?

11 THE COURT: I would ask that you drop them off with my
12 courtroom deputy, Ms. Blum across the hall on your way out.

13 MS. KILFOYLE: Okay. Thank you, Your Honor.

14 THE COURT: Thank you.

15 MS. GREER: Thank you, Your Honor. Stephanie Greer
16 from Dickstein & Shapiro on behalf of the GUC Trust.

17 We have -- I'm pleased to report first, Your Honor,
18 that we've managed to resolve a number of the claims that were
19 on the calendar for today. We did contact your chambers on
20 Friday, hopefully made its way to you.

21 Both Franco and McNeal, we're going to adjourn those
22 because we haven't -- you know, we don't have definitive
23 documentation at this point, but I'm hopeful that those will
24 both get resolved, and that they will not come back to us.

25 In the meantime, I have three -- I'm not sure if

1 uncontested or contested matters before me. Is anyone on the
2 phone? Counsel for Brewer?

3 THE COURT: Let's see. I have a phone log that
4 indicates presence for Mr. Kenneth Smith, Thomas Kelliher, are
5 you on the phone, sir?

6 MR. KELLIHER: I am. Can you hear me?

7 THE COURT: Yeah, I can hear you pretty well, Mr.
8 Kelliher. Are you here to argue on behalf of your client
9 today?

10 MR. KELLIHER: I am, Judge. It actually has to do
11 with respect to the 282nd omnibus objection.

12 MS. GREER: We were not -- who do you represent, Mr.
13 Kelliher?

14 MR. KELLIHER: I represent Kenneth Smith, and I think
15 there was a problem with the notice. The objection according
16 to my records was filed on August 22nd, 2012, but my office
17 didn't receive it until the Friday before the response date. I
18 guess that was the 14th, I received it on September 14th. And
19 then I -- with the short notice, I tried to quickly file
20 something. I didn't get it filed on Monday, the 17th, which I
21 guess was, you know, the due date for it, but I think I filed
22 it the next day or the day after.

23 THE COURT: Well, I'm reluctant Ms. Greer to award a
24 default, but I don't know if it's fair or appropriate to either
25 side to hear it today. Do you have a view?

1 MS. GREER: No, Your Honor, I'm more than happy to
2 adjourn that one. We were not aware of any objection. There
3 was none filed on the docket, but certainly at this point, I'm
4 happy to coordinate with counsel, see if we can get the
5 information that we need and avoid the need to expunge the
6 claim on the basis of insufficient documentation.

7 THE COURT: Mr. Kelliher, my tentative, and I think
8 Ms. Greer just agreed to it, but I want to give you a chance to
9 comment, is that under the circumstances, what I would like to
10 do is kick the matter, invite you and Ms. Greer to have a
11 dialog. And you agree, great, and if you agree to disagree,
12 then I'll hear it when both sides are in a better position to
13 argue the matter, and I've had a chance to prepare in advance
14 of court, which is what I like to do. And as before, I'll
15 permit you to appear by phone.

16 Where are you calling in from?

17 MR. KELLIHER: I'm calling from Chicago, Judge.

18 THE COURT: Uh-huh. Well, I assume again you'd like
19 to avoid a trip to my courtroom if you can avoid it. Are you
20 comfortable with that approach?

21 MR. KELLIHER: Yes, that's fine.

22 THE COURT: Okay. Then why don't we do that, Mr.
23 Kelliher and Ms. Greer. And you folks have a dialog between
24 now and the next omnibus hearing, and I'm grateful for you
25 wanting to minimize the number of times that you come back.

1 But I think this is fair to all concerned.

2 MS. GREER: Sounds good, Your Honor.

3 THE COURT: Okay.

4 MS. GREER: Okay. I was going to go forward with
5 Autonation, Haack and Brewer. I understood that Ms. Brewer's
6 counsel, Archie Sanders was going to attend by phone, but
7 doesn't sound like he is --

8 THE COURT: Well, I do show an Archie Sanders on my
9 phone log. Are you on the phone, Mr. Sanders?

10 MR. SANDERS: Yes, Your Honor, I am.

11 THE COURT: Oh, okay.

12 MS. GREER: Okay. Well, Your Honor, what I'll do
13 unless you prefer otherwise is I'll go through the uncontested
14 objections first. One is the Haack objection and one is
15 Autonation. I can run through those quickly for Your Honor.

16 Both of those were filed as stand alone objections.
17 The John Haack, Claim No. 62969, this is the one where Mr.
18 Haack alleged he was scared because of a brake defect in his
19 vehicle. Your Honor, as set forth in our papers, it's our
20 position that as a matter of law, Mr. Haack doesn't have a
21 claim because he hasn't been able to show any injury. He
22 certainly acknowledged in his papers that he has no injury to
23 her person, no injury to his property, so we'd ask on that
24 basis, and for the reasons set forth in our objection that the
25 claim be expunged.

1 THE COURT: Okay. Anybody here on that objection,
2 either in the courtroom or on the phone?

3 No response.

4 Granted, Ms. Greer.

5 MS. GREER: Thank you, Your Honor. The next one is a
6 claim filed by Autonation. Your Honor, this is Claim No.
7 50085, it's a claim -- it's a 502(e)(1)(B) objection, Your
8 Honor. I spoke to counsel for Autonation, Skadden Arps, and
9 had some discussions with them. They've asked that we include
10 some language in the order, which addresses their 502(j) rights
11 in particular. We agreed to do that, so the order that we will
12 submit to Your Honor reflects an agreement by the claimant and
13 the GUC Trust as to 502(j).

14 THE COURT: That's fine.

15 MS. GREER: Okay. Thank you, Your Honor. Anything
16 else you need to hear on that one?

17 THE COURT: No, I guess we're down to Mr. Sanders and
18 Ms. Brewer.

19 MS. GREER: Thank you. Your Honor, one second, I have
20 a paper problem here.

21 THE COURT: Yes.

22 (Pause)

23 MS. GREER: I think it might have walked out the door.
24 That's okay though.

25 Your Honor, simply put, this is a claim filed by a

1 claimant 11 months late. Your Honor, counsel, Mr. Sanders,
2 filed the claim. It's his position that he -- there is
3 excusable neglect because he switched law firms. Your Honor,
4 he did not provide notice to the Court in the underlying
5 litigation that he switched law firms, so the notice was given
6 to the address on the Court's docket.

7 So, Your Honor, I think -- thank you very much.
8 First, I guess, Your Honor, as we set forth in our papers, the
9 first issue is the presumption that the mail was received.
10 This applies where it's the wrong address or not, and as Judge
11 Lifland found in Macy's, of course, the presumption attaches
12 because when you mail something, it's also presumed that it
13 will be forwarded to the new address.

14 In this case, Mr. Sanders has not provided anything at
15 all to defeat that presumption. In any event, Mr. Sanders
16 can't show excusable neglect. There is nothing in his papers
17 to support any sort of excusable neglect, especially given that
18 Mr. Sanders himself should've been provided notice to the
19 debtors when he changed an address. I think the case law is
20 clear.

21 The case law that we cite, Akerage (ph), Telligent,
22 among others, all those cases stand for the proposition that it
23 is the attorney's responsibility. And in actually one of the
24 cases, I think it's Akerage, is a pro se claimant's
25 responsibility to provide the debtors with any notice of a

1 change of address. There's certainly no excusable neglect
2 here, Your Honor. I think it's pretty clear there's neglect,
3 but not excusable neglect.

4 So unless Your Honor has any questions, we can perhaps
5 give Ms. Brewer's counsel an opportunity to be heard, and I can
6 reserve our right to reply.

7 THE COURT: Let me ask you a question, Ms. Greer. Is
8 this a case or the case where you worked out a settlement with
9 Mr. Sanders, but his client, Ms. Brewer, was -- had failed to
10 execute the settlement papers?

11 MS. GREER: Yes, Your Honor. We had started engaging
12 in a dialogue with Mr. Brewer when he filed his response to our
13 original objection probably over a year ago now, and we, you
14 know, resolved it for relatively, you know, diminimus amount of
15 money. Everybody seemed amenable, and as time went on, I wrote
16 -- let Mr. Sanders -- left a message after message, sent him
17 letter after letter saying if you don't sign the settlement
18 agreement, we are going to be forced to go forward with this
19 objection. You know, no one has any interest in going forward
20 with an objection on the basis that their -- someone's counsel
21 failed to do something. And we are happy to have had the
22 opportunity to resolve that. But unfortunately Mr. Sanders has
23 not been able to get his client's signature.

24 He called me on Thursday and said, more time, more
25 time, and I said no more time. You know, we're done providing

1 time on this. I think we have very strong arguments as to why
2 this is inexcusable neglect, and I think at this point our
3 client just wants this one off the register.

4 THE COURT: Uh-huh. Okay. Mr. Sanders?

5 MR. SANDERS: Yes, Your Honor. As I stated in our
6 papers, I believe there was excusable neglect in this case.
7 Unfortunately, it's one of those circumstances where apparently
8 the proof of claim was filed at about the same time the switch
9 of law firms was made. And so I did not receive the notice of
10 proof of claim that had been filed. I did receive notice when
11 the state court set this case for a status conference, and I
12 received notice of that. And GM's local counsel at that point
13 advised me about the -- there was an issue involving the proof
14 of claim. Once I learned that, I immediately did file a proof
15 of claim. So that's a -- and I can answer any questions the
16 Court might have.

17 THE COURT: No, thank you. Ms. Greer, reply?

18 MS. GREER: Yes, Your Honor. A few things. First,
19 Your Honor, it is -- Mr. Sanders has never changed his address
20 with the Court. So on the underlying litigation, the docket
21 still reads, and we attach that to our reply, the underlying
22 docket still has his old address on it. So Mr. Sanders has
23 taken no steps to ensure that he's gotten the proper notice.

24 Indeed, he must have known that the case was stayed,
25 because the state -- you know, after the bankruptcy case was

1 filed. So in that regard, certainly had notice of the
2 bankruptcy, and it is his obligation to obtain information
3 about the bar date, and to provide his new address to the
4 debtors.

5 You know, it's unfortunate that his -- as a matter of
6 law, that his client is bound by the actions or inactions in
7 this case of her attorney. And therefore, we think the claim
8 should be expunged.

9 THE COURT: Okay. Every --

10 MR. SANDERS: Your Honor, I would like to add just one
11 small thing. As far as the docket sheet is concerned, the way
12 -- it's my understanding the state court does it. The address
13 that is entered and that appears on the docket sheet is the
14 address of the attorney at the time the case is filed. At some
15 point later, if an address -- if an attorney changes his
16 address, there's another way of dealing with that, but they do
17 not go back and change your address on every case on every
18 docket sheet. It would be -- the address appears to say,
19 basically was, at the time the case was filed, although things
20 may have changed since then.

21 THE COURT: Okay. Ladies and gentlemen, I'm
22 sustaining the GUC Trust objection to this claim. And will be
23 disallowing it, although I will be staying my ruling or the
24 effectiveness for three weeks from today to give Ms. Brewer one
25 last chance to accept the settlement if she wants it. And the

1 following are the bases for the exercise of my discretion in
2 connection with this determination.

3 First, as Ms. Greer properly observed, there is a
4 presumption of receipt for mailing, and that presumption is of
5 particular significance when the address that has been used for
6 the mailing is the exact address that has been used by the
7 claimant.

8 I take it as true that state court rules may not
9 impose the same expectations of a notification of change of
10 address, but frankly, folks, that is the way by which the
11 bankruptcy court has to function. People invoking the claims
12 process must recognize the possibility, the foreseeability that
13 a claims objection may be filed, and the only way by which the
14 estates of the world, the debtors-in-possession or the
15 creditors who may succeed them under confirmed plans can
16 proceed is by contacting people at the last address that they
17 were given.

18 Now, that is not to say that I find counsel to have
19 been negligent in any way, but the burden is on the claimant to
20 show excusable neglect. And here as Ms. Greer properly
21 observed, while there is neglect within the meaning of that
22 rule, the claimant has failed to meet her burden of showing
23 excusable neglect.

24 Now with that said, I hate to deprive a claimant of
25 any opportunity to recover anything, and I think at the very

1 least, she should have the ability to mitigate her damages. So
2 therefore, although this may be displease the GUC Trust, I'm
3 going to give her one last chance to accept that settlement.
4 If she doesn't, there will be no recovery, but of course, this
5 is without prejudice to her rights to appeal.

6 But although I'm reluctant to use the words like
7 enough is enough because I do recognize that every claims
8 allowance affects a claimant's life, the law in this area is
9 not particularly debatable, nor are the facts in any way in
10 material dispute.

11 So, Ms. Greer, you are to settle an order in
12 accordance with the foregoing. One week, seven calendar days
13 by mail or e-mail to register objections to the form of the
14 proposed order, but the proposed order is also to say that it
15 shall become effective three weeks after the date of its entry.
16 And the legislative history of this order is going to be that
17 if Ms. Brewer signs the settlement agreement in three weeks or
18 the time between today and the three weeks after entry of the
19 order, I will not sign the ultimate order. But the ruling
20 should be clear and unmistakable.

21 Okay? Anything further from either side, not by way
22 of reargument but any open matters?

23 MR. SANDERS: No, Your Honor.

24 MS. GREER: No, Your Honor.

25 THE COURT: Okay. And am I right, Ms. Greer and Mr.

1 Griffiths, that that concludes our work for today, except for
2 the matter that they're trying to deal with out in the hall?

3 MS. GREER: For that one and one other thing, Your
4 Honor. I just wanted to check if Your Honor needs anything
5 further from us on the Shaw order. You had written a
6 decision --

7 THE COURT: No, that's in a pile that I've got -- I
8 think you have given me a proposed order consistent with my
9 written opinion if I'm not mistaken.

10 MS. GREER: Yes, Your Honor.

11 THE COURT: But you're diplomatically reminding me
12 that the time for appeal and that can't start to run until I
13 enter the order.

14 MS. GREER: Yes, Your Honor.

15 THE COURT: I understand.

16 MS. GREER: Okay. Thank you.

17 MR. SANDERS: Your Honor, this is Mr. Sanders, may I
18 be excused, please?

19 THE COURT: Yes, and I am right that everybody in the
20 courtroom can now be excused?

21 Okay. Yes, sir, you may be excused.

22 MR. SANDERS: Thank you, Your Honor.

23 THE COURT: Can I ask you, sir, to tell your client
24 what happened today, Mr. Sanders, and I can't give your client
25 legal advice, but you may want to tell her that the kind of

1 decision that I had which is one of discretion, is often
2 sustained on appeal. And I'm not telling the appellate courts
3 how to do things, or you how to do things, or for that matter
4 your client to do things, but you may want to look long and
5 hard about whether she should sign that settlement agreement.

6 MR. SANDERS: I understand, Your Honor, and I will
7 definitely pass that on to the client.

8 THE COURT: Okay. Thank you very much, we're
9 adjourned.

10 (Concluded at 11:10 a.m.)
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C E R T I F I C A T I O N

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: September 25, 2012

Sheila Orms

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